

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03cr67-MU**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LEWIS MOSES BYRD,)
)
 Defendant,)
 _____)

ORDER

THIS MATTER comes before the Court upon Defendant's untitled Motion (document # 36), filed February 24, 2006.

On April 29, 2003, Defendant was indicted for violating 21 U.S.C. § 841, 18 U.S.C. § 924(c), and 18 U.S.C. § 922. On December 23, 2005, the parties filed a plea agreement. On January 7, 2006, Defendant entered a plea of "guilty" at his Rule 11 hearing. On January 24, 2006, this Court sentenced Petitioner to 262 months imprisonment for violating 21 U.S.C. § 841 and a consecutive term of imprisonment of 120 months for violating 18 U.S.C. § 924(c). On January 26, 2006, Defendant filed a Notice of Appeal. His appeal is currently pending before the United States Court of Appeals for the Fourth Circuit.

In the instant motion Defendant, citing to United States v. Booker, argues that he was improperly sentenced. As noted above, Defendant's case is currently pending before the United States Court of Appeals for the Fourth Circuit. As such, this Court lacks jurisdiction to rule on Defendant's motion and it is dismissed.

IT IS, THEREFORE, ORDERED that Defendant's untitled Motion filed February 24, 2006 is **DENIED**.

Signed: March 10, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

